IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 3577 of 2001 (S/S)
(Old No. 9311/1999)

Smt. Rama Pant …… Petitioner

Versus

The District Magistrate,
Nainital & others …… Respondents

Mr. Manoj Tiwari, learned counsel for the petitioner.
Mr. S. Upadhyaya, learned Standing Counsel for the State.

Hon. P.C. Vernma, A.C.J.

This petition is directed against the order passed by the District Magistrate, Nainital cancelling the promotion of the petitioner in Nagar Palika Boys Inter College, Kathgodam made by the Chairman, Nagar Palika Parishad, Haldwani / Ex-officio Manager of the Institution in purported exercise of power under Section 34 of the U.P. Municipalities Act, 1916. The appointment was made by the Chairman, Nagar Palika Parishad, Haldwani under Section 73 of the U.P. Municipalities Act, 1916 which empowers the Chairman of the Municipal Board to appoint any employees in an education establishment managed or maintained by the Municipalities except a teacher or the Principal of the Institution. The petitioner was promoted by the Chairman, who happens to be a specified Authority under Section 73 of the U.P. Municipalities Act, 1916. Section 34(1-A) of the U.P. Municipalities Act, 1916 provides that District Magistrate may prohibit further execution of a resolution or order of the Municipality, in public interest. Sub Section (1-A) of Section 34 provides that the District Magistrate may, within the limits of his District, by order in

writing, prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a municipality or a committee of a municipality or a joint committee or any officer or servant of a municipality or of a joint committee **if in his opinion such resolution or order is of a nature to cause or tend to cause danger to human life, health or safety or a riot or affray, and may prohibit the doing or continuance by any person of any act, in pursuance of or under cover of such resolution or order.**

Under this sub Section the power is to be exercised when the order is of a nature which may cause or tend to cause danger to human life, health or safety or a riot or affray, the appointment by promotion does not cause danger to human life, health or safely or a riot or affray. Therefore, the promotion of the petitioner cannot have been annulled or cancelled in exercise of power under this sub Section (1-A) of Section 34 of the U.P. Municipalities Act, 1916. In the counter affidavit it has been stated that the District Magistrate was delegated the power to exercise sub Section (1-B) of Section 34 of the U.P. Municipalities Act, 1916. Section 327 of the U.P. Municipalities Act, 1916 provides delegation of power by the State, which reads as under:

> *"The State Government may, by notification, delegate to the prescribed authority in respect of any specified municipality or municipalities [within his or its jurisdiction] any one or more of the powers vested in it by this Act, with the exception of the powers detailed in Schedule VII."*

Under this Section the State Government is not empowered to delegate its power to the District Magistrate,

which is to be exercised by the State Government under sub-Section (1-B) of Section 34 of the U.P. Municipalities Act, 1916. The power under Section 34(1-B) can be delegated to Prescribed Authority only not to the District Magistrate. Therefore, the argument by the learned Standing Counsel for the State based on the statement made in the counter affidavit is not tenable. Government Order so referred also does not speak about such delegation of power exercisable by the State Government under sub Section (1-B) of Section 34 of the U.P. Municipalities Act, 1916 to the District Magistrate. Therefore, the order passed by the respondent No. 1 is illegal and cannot be sustained. Therefore, the writ petition is allowed. A writ of certiorari issued. The order dated 26.02.1999 is hereby quashed. No order as to costs.

However, it is open for the District Magistrate to pass appropriate order in accordance with law.

(P.C. Verma, A.C.J.)

Dt. 10.06.2004
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